

§ 2.162

abandon the mark as to those goods or services.

[54 FR 37597, Sept. 11, 1989]

§ 2.162 Requirements for affidavit or declaration during sixth year.

The affidavit or declaration required by § 2.161 must:

(a) Be executed by the registrant after expiration of the five-year period following the date of registration or of publication under section 12(c) of the Act;

(b) Be filed in the Patent and Trademark Office before the expiration of the sixth year following the date of registration or of publication under section 12(c) of the Act;

(c) Identify the certificate of registration by the registration number and date of registration;

(d) Include the required fee for each class to which the affidavit or declaration pertains in the registration. If no fee, or a fee insufficient to cover at least one class, is filed before the expiration of the sixth year following the date of registration or of publication under Section 12(c) of the Act, the affidavit or declaration will not be refused if the required fee(s) (See § 2.6) are filed in the Patent and Trademark Office within the time limit set forth in the notification of this defect by the Office. If insufficient fees are included to cover all classes in the registration, the particular class or classes to which the affidavit or declaration pertains should be specified.

(e) State that the registered mark is in use in commerce, list the goods or services recited in the registration on or in connection with which the mark is in use in commerce, and specify the nature of such commerce (except under paragraph (f) of this section). The statement must be accompanied by a specimen or facsimile, for each class of goods or services, showing current use of the mark. If the specimen or facsimile is found to be deficient, a substitute specimen or facsimile may be submitted and considered even though filed after the sixth year has expired, provided it is supported by an affidavit or declaration pursuant to § 2.20 verifying that the specimen or facsimile was in use in commerce prior to the expiration of the sixth year;

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(f) If the registered mark is not in use in commerce on or in connection with the goods or services recited in the registration, recite facts to show that nonuse as to those goods or services is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark as to those goods or services. If the facts recited are found insufficient, further evidence or explanation may be submitted and considered even though filed after the sixth year has expired; and

(g) Contain the statement of use in commerce or statement as to nonuse and appropriate specimen or facsimile, as required in paragraphs (e) and (f) of this section, for each class to which the affidavit or declaration pertains in this registration.

(Secs. 8 and 9, Pub. L. 97-247 (96 Stat. 320); 35 U.S.C. 6; 15 U.S.C. 1113, 1123)

[41 FR 761, Jan. 5, 1976, as amended at 47 FR 41282, Sept. 17, 1982; 48 FR 3977, Jan. 28, 1983; 54 FR 37597, Sept. 11, 1989]

§ 2.163 Notice to registrant.

If no affidavit or declaration is filed within a reasonable time prior to expiration of the sixth year, the registrant may be notified that the registration will be cancelled by the Commissioner at the end of such sixth year unless the owner files in the Patent and Trademark Office the affidavit or declaration of use or excusable nonuse required by section 8. Failure to notify the registrant does not, however, relieve the registrant of the responsibility of filing the affidavit or declaration within the period required by statute.

§ 2.164 Acknowledgment of receipt of affidavit or declaration.

The registrant will be notified by the Examiner of Trademarks of the receipt of the affidavit or declaration and, if satisfactory, of its acceptance.

§ 2.165 Reconsideration of affidavit or declaration.

(a)(1) If the affidavit or declaration filed pursuant to § 2.162 is insufficient or defective, the affidavit or declaration will be refused and the registrant